

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Kathleen M. Tafoya

Civil Action No. 11-cv-01522-MSK-KMT

TIMOTHY S. TUTTAMORE,

Plaintiff,

v.

DR. ALLRED,

A. OSAGIE,

ADX WARDEN DAVIS,

M. SMITH, and

UNKNOWN UTILIZATION COMMITTEE MEMBERS, all in their official and individual capacities,

Defendants.

ORDER

This matter is before the court on Plaintiff's "Motion seeking the Court's [sic] to Serve the Added Defendants Pursuant to Tuttamore Second Verified Amended Complaint as Requested within Doc. # 119 & 133 and to Compel to Defendant's [sic] to Respond to Verified Plaintiff's Motion for a Preliminary Injunction." (Doc. No. 199, filed December 14, 2012.) It is ORDERED that Plaintiff's Motion is GRANTED in part and DENIED in part as follows.

Plaintiff's Motion (Doc. No. 199) is DENIED to the extent that Plaintiff seeks to compel Defendants to respond to the "'Verified' Plaintiffs [sic] Motion for a Preliminary Injunction for Proper Access to the Courts" (Doc. No. 120, filed Apr. 19, 2012). The Motion for Preliminary

Injunction was terminated pursuant to District Judge Krieger's order administratively closing this case. (See Doc. No. 128, filed May 4, 2012.) Moreover, at the time the Motion for Preliminary Injunction was filed, it did not relate to the subject-matter of Plaintiff's original Complaint (Doc. No. 1)—the operative pleading at that time. *Penn v. San Juan Hospital*, 528 F.2d 1181, 1185 (10th Cir. 1975) (to succeed on a motion for preliminary injunction motion, there must be a relationship between the temporary and permanent relief sought). As such, to the extent that Plaintiff seeks the same or similar relief, a renewed motion must be filed.

Plaintiff's Motion (Doc. No. 199) is GRANTED to the extent that he seeks to have the United States Marshal Serve his Second Amended Complaint (Doc. No. 191). The court has granted Plaintiff leave to proceed *in forma pauperis*. As such, it is ORDERED that, if appropriate, the Clerk shall attempt to obtain a waiver of service from the defendants. If unable to do so, the United States Marshal shall serve a copy of the amended complaint, summons, order granting leave to proceed pursuant to 28 U.S.C. § 1915, and all other orders upon the new defendants. If appropriate, the Marshal shall first attempt to obtain a waiver of service of these documents pursuant to Fed. R. Civ. P. 4(d). All costs of service shall be advanced by the United States.

Dated this 18th day of December, 2012.

BY THE COURT:



Kathleen M. Tafoya
United States Magistrate Judge